HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.14341 OF 2007

Between:

M/s.Maturu Co.operative Housing Society Ltd
and another

. . .Petitioners

AND

The Central Bank of India, Hyderabad and another

. . .Respondents

:: ORDER ::

Counsel for the petitioners : Shri Venkata Rangadas Kanuri

Counsel for the respondent No.1: Shri Ch. Shiva Reddy

7th August, 2007

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PER G.S.SINGHVI, CJ

This is a petition for quashing proclamation dated 29.5.2007 issued by Recovery Officer, Debts Recovery Tribunal, Hyderabad (respondent No.2) for sale of the property belonging to petitioner No.1 for satisfying the decree passed by Debts Recovery Tribunal, Hyderabad (for short, 'the Tribunal') in O.A.No.154 of 2002.

In the affidavit filed in support of the writ petition, petitioner No.2 – B. Purushothama Rao, who claims to have been elected as President of Maturu Co-operative Housing Society Limited in the second week of February, 2006, has averred that on an application filed by the Central Bank of India (for short, 'the bank') under Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for short, 'the Act'), the Tribunal passed

ex parte decree for a sum of Rs.14,17,495/- and for execution of the same, respondent No.2 issued proclamation dated 5.7.2007. He has further averred that due to total mismanagement of the affairs of petitioner No.1, the application filed by the bank was not contested and on coming to know of the ex parte decree, he filed I.A. (SR) No.30 of 2007 for setting aside the same. According to Shri B. Purushothama Rao, the application for stay filed in I.A. (SR) No.30 of 2007 has not been decided by the Tribunal and respondent No.2 is determined to auction the property belonging to petitioner No.1. He has pleaded that the impugned proclamation is liable to be quashed because the same is contrary to the procedure prescribed under Rules 52 to 56 of the Recovery Rules.

We have heard learned counsel for the parties and perused the record. At the outset, we consider it proper to mention that while issuing notice of the main petition on 05-07-2007, this Court partially stayed the auction proceedings subject to the condition that the petitioners shall deposit Rs.10 lakhs within two weeks.

At the hearing, Shri Ch. Shiva Reddy, learned counsel for the bank, on the basis of instructions given to him, made a statement that the petitioners have not deposited the amount specified in the court's order dated 05-07-2007. Shri Venkata Rangadas Kanuri candidly stated that his clients have failed to comply with the conditional interim order passed by the Court and submitted that he is not in a position to explain why the amount of Rs.10 lakhs was not deposited. He also conceded that the application filed by the petitioners for setting aside the ex parte decree is pending before the Tribunal.

In view of the above, we do not find any justification to entertain the hyper-technical objection raised by the petitioners i.e. violation of the procedure prescribed under Rules 52 to 56 of the Recovery Rules and frustrate the action taken by respondent No.2 for recovery of the amount due to respondent No.1.

With the above observation, the writ petition is dismissed.

However, it is made clear that dismissal of the writ petition shall not adversely affect adjudication of the application filed by the petitioners for setting aside the ex parte decree passed by the Tribunal.

As a sequel to dismissal of the writ petition, WPMP No.18018 of 2007 filed by the petitioners for interim relief is also dismissed.

G.S.SINGHVI, CJ

August 07, 2007

C.V.NAGARJUNA REDDY, J

SVS